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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 147

RAYMOND L. HAYNES, *Petitioner,*

v.

STATE OF WASHINGTON, *Respondent.*

MISC. NO. 1022

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF FOR THE RESPONDENT

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SUBJECT INDEX

Page

Table of Cases ..... *i, ii*

Respondent's Statement of the Case 1

Questions For Review 9

Argument

I. Disputed Factual Issues Decided in the Courts of the State of Washington 9

II. Absence of Circumstances which Render a Confession Involuntary and Inadmissible 17

Conclusion 26

TABLE OF CASES

Ashcraft v. Tennessee, 322 U.S. 143, 88 L. Ed. 1192, 64 S. Ct. 921 (1944) 20, 21, 25

Chambers v. Florida, 309 U.S. 227, 84 L. Ed. 716, 60 S. Ct. 472 (1940) 21

Cicenia v. LeGay, 357 U.S. 504, 2 L. Ed. (2d) 1523, 78 S. Ct. 1297 (1958) 20

Crooker v. California, 357 U.S. 433, 2 L. Ed. (2d) 1448, 78 S. Ct. 1287 (1958) 21

Fikes v. Alabama, 352 U.S. 191, 1 L. Ed. (2d) 246, 77 S. Ct. 281 (1957) 20, 22

TABLE OF CASES (Cont'd)

Page

Gallegos v. Colorado, U.S. , 8 L. Ed. (2d) 325, 82 S. Ct. 21, 22, 23, 25

Haley v. Ohio, 332 U.S. 596, 92 L. Ed. 224, 68 S. Ct. 302 (1948) 20, 21, 22, 23, 24

Harris v. South Carolina, 338 U.S. 68, 93 L. Ed. 1815, 69 S. Ct. 1354 (1949) 21, 22

Payne v. Arkansas, 356 U.S. 560, 2 L. Ed. 975, 78 S. Ct. 844 (1958) 21

Reck v. Pate, 367 U.S. 433, 6 L. Ed. (2d) 948, 81 S. Ct. 1541 (1961) 17, 18, 19, 21

Spano v. New York, 360 U.S. 315, 3 L. Ed. (2d) 1265, 79 S. Ct. 1202 (1959) 21, 22

Turner v. Pennsylvania, 338 U.S. 62, 93 L. Ed. 1810, 69 S. Ct. 1352 (1949) 21

Watts v. Indiana, 338 U.S. 49, 93 L. Ed. 1801, 69 S. Ct. 1341 (1949) 16, 20

STATUTES

Revised Code of Washington, Sec. 9.33.020(5) 19

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BRIEF FOR THE RESPONDENT

RESPONDENT'S STATEMENT OF THE CASE

A robbery in progress was reported to the Spokane Police Department on the 19th day of December, 1957 at approximately 9:05 p.m. (R. 30-35). The description of one of the two persons involved was broadcast over the police radio (R. 40). Approximately 25 minutes after the report of the robbery, a uniformed policeman observed the petitioner walking away from the scene of the robbery (R. 40). As the police car approached the petitioner, he walked into the yard of a home. He was then summoned by one of the police officers and briefly questioned. The petitioner indicated that "he lived there" (R. 40). The petitioner

then pretended to open the door of that house, but the police car did not leave, and the officers kept the petitioner under surveillance. Petitioner then walked back down the sidewalk from the house and stated to the officers, "You got me, let's go." (R. 40). The petitioner was placed in the police car, where he admitted the robbery itself (R. 41, 48). The petitioner was taken in the police car to the scene of the robbery, where he admitted to the uniformed policeman that this was the service station he had robbed (R. 41). There is nothing in the record to indicate that this confession was coerced. The petitioner was taken by the uniformed officers to the Spokane City Police station, where he arrived some 20 minutes after his surrender (R. 49).

Lieutenant Wakeley of the Spokane City Police Department was in charge of the detectives' office on the shift between 4 p.m. and 12 midnight (R. 52, 56). Lieutenant Wakeley talked to the petitioner at 10:00 p.m., or slightly thereafter on December 19, 1957 (R. 52, 54). The petitioner admitted that he and his brother had been looking for a place to "hold up" that evening (R. 53). The petitioner then made an oral confession to Lieutenant Wakeley as follows (R. 53, 54):

> "A (by Lt. Wakeley) He said they decided to hold up a place so they drove around to find some place that didn't seem to have any customers and they didn't know the streets, didn't know the town very

well. They said they were out where they found the car. They drove by and saw a service station which didn't seem to have any business, so they parked the car in the alley and walked into the service station, and Raymond said that he told the man it was a holdup and his brother stood behind the man and he got the money from the service station operator. He didn't think his brother got any of it. After they held up the place they ran out the door and he ran down the side street, not directly toward the car, down around toward the end of the block and come back down the alley and as he was approaching the car he saw a police officer had his brother in custody. So he turned and ran north about two blocks and then turned and went west about three blocks before a prowl car came along and they stopped and talked to him and asked him where he was going. He said he was going home and he turned and walked up onto a porch. He stood on the porch and he said the prowl car sat out there in the street, didn't move, so he thought well, I might as well give up. So he went back and told them he was the man they were looking for." (R. 53, 54).

Lt. Wakeley terminated this conversation, after obtaining the aforesaid confession, at 10:30 p.m. on the 19th of December, some 20 minutes to half an hour after he first saw the petitioner and after the petitioner was first brought to the city jail (R. 55). Thus, this oral confession was obtained approximately an hour after the petitioner's arrest, and after twenty minutes of questioning by Lt. Wakeley (R. 55). The petitioner made no request to call his wife during the aforesaid conversation (R. 56). The petitioner might have made such request *after* giving the confession,

and the petitioner was in fact told that his wife would be notified (R. 56). Nothing in the record indicates that the petitioner's wife was not notified by the Spokane Police Department of the petitioner's arrest. The record is void of any request by petitioner made to Lt. Wakeley to call an attorney. The petitioner in his testimony does not indicate that the confession and the facts surrounding the confession as related by Lt. Wakeley are in any manner incorrect. No objection was made to Lt. Wakeley's narration of the confession at the time of trial, (R. 53, 54). Lt. Wakeley talked to petitioner just this one time (R. 58).

Detective Pike was on duty from 4 p.m. to midnight on December 19th, 1957. Petitioner testified that he asked "Pike" several times if he could call a lawyer on the night of his arrest (R. 97). Detective Pike testified that he saw petitioner, was in the same room with him, but that *he did not talk with petitioner* (R. 51).

The petitioner and his brother, Keith Haynes, were placed in a "lineup." Apparently the petitioner was taken to jail about 11:00 p.m. on December 19, 1957, after having spent some 25 additional minutes while the lineup was in progress (R. 97, 98). According to the testimony of the petitioner, nothing else was done that night (R. 98). Nothing in the record indicates that petitioner was not permitted adequate food and rest. The following morning, December 20, at about

9:00 a.m., the petitioner was fingerprinted (R. 99). At approximately 9:30 a.m. the petitioner was questioned by detectives Peck and Cockburn on the day shift, for a period of about 1½ hours (R. 63, 67 and 99). At this time the petitioner again related orally the commission of the holdup by himself and his brother (R. 63-66). The testimony of the officer regarding this oral confession was admitted in evidence with no objection by the petitioner. The confession later admitted as Exhibit No. 6 (R. 81, 83-88), was recorded by a stenographer from 10:45 a.m. to 11:00 a.m. on December 20, 1957 (R. 75). This confession was later reduced to a typewritten transcript and admitted in evidence as Plaintiff's Exhibit No. 6 (R. 81, 83-88). During the time the confession was being recorded by the stenographer, the petitioner requested that he see the prosecuting attorney. He made no request to see any other attorney, and he made no request to call his wife (Ex. 6, R. 83-88). This written confession was nearly identical with the prior oral confessions. In this confession the petitioner was asked the following (R. 88):

> "Q. Have we (Detectives Cockburn and Peck) made you any threats or promises?
>
> A. No.
>
> Q. Has any police officer made you any promises or threats?
>
> A. No, except that the lieutenant promised me that as soon as I was booked that I could call my wife.

Q. You are being held for investigation. You haven't been booked yet. When you are you will be able to phone your wife."

The petitioner made no mention in the confession of any promise by Peck or Cockburn with respect to permitting the petitioner to phone his wife, or an attorney, nor any promise or refusal by Detective Pike, Plaintiff's Exhibit No. 6 (R. 81, 83-88).

Detective Cockburn testified that he could recall no such requests being made by the accused. Detective Peck was not called by either the petitioner or the respondent (R. 68).

Petitioner was taken to the office of Deputy Prosecutor Gray where he swore to and signed this confession (R. 76-77). After signing this confession, Plaintiff's Exhibit No. 6 (R. 83-88), the petitioner again confessed to Prosecutor Gray, this confession being in substance the same as the prior confessions (R. 108).

The petitioner testified that he was promised permission to call an attorney if he cooperated and gave a statement (R. 97). However, he also testified that in fact he did not want an attorney but merely sought to contact his wife (R. 106). The petitioner indicated that his only reason for not wanting to call an attorney was the possibility that his wife might have hired an attorney, and the petitioner did not want to be faced with the problem of having two attorneys (R. 106).

The petitioner at no time made a false statement to the authorities, nor did he ever refuse to give an oral confession. Nothing in the record indicates that he was at any time subjected to abuse, mistreatment or threats by any law enforcement authorities. The petitioner never denied the truth of any of his confessions to anybody (R. 107).

The petitioner testified that he had been convicted of the crimes of armed robbery, breaking and entering, drunk driving and resisting arrest. These admissions were in answer to the question, "Were you in any other trouble?" (R. 101). On cross examination the petitioner was asked if there was any other crime that he had been convicted of. The petitioner did not reply to this question. Finally, in answer to the specific questions detailing additional crimes, the petitioner admitted that he had been convicted of the crimes of taking a car without the owner's permission; likewise he finally admitted a record of conviction for jail-break (R. 108).

From the time of petitioner's presence in the tavern prior to the robbery, to the questioning by officers of the Spokane City Police, none of the persons who observed him felt that petitioner was effected by the liquor that he had consumed (R. 36, 38, 42, 45, 59, 51, 54, 60 and 111).

On December 20, 1957 the petitioner's wife by telephone questioned the authorities as to whether or not her husband was in jail, and she was informed that he was. Upon asking *why* petitioner was in jail, she was refused further information over the telephone. She was referred to the newspapers for information as to *why* he was in jail. She did not ask that the police take a message to the petitioner. She did not ask the police for permission to call him. She did not ask to visit with the petitioner, she did not telephone the city jail itself (R. 131). The petitioner's wife appeared at the Spokane city jail on December 21, 1957, at which time she talked to one of the investigating officers about the petitioner's automobile, but she did not at that time request to see the petitioner nor request that he be given a message, nor ask permission to call him, nor to call the jail (R. 131).

The petitioner called no witnesses from the Spokane City Jail to establish his conclusion that phone calls were "not allowed." Petitioner called no witnesses from the Spokane County Jail to establish his conclusion that phone calls were "not allowed." Petitioner never testified whether he had ever, in fact, asked any jailer for permission to use the telephone and there was no proof as to whom he asked when he made the request, if any, nor how many times he made the request, if he made one at all.

QUESTIONS FOR REVIEW

Was due process of law denied to the petitioner by the admission in evidence of a signed confession where the petitioner orally confessed immediately upon his surrender to the police, made two subsequent detailed oral confessions shortly after his surrender, dictated a written confession which he signed within 17 to 19 hours after his surrender; where the only allegation of coercion by the police was incommunicado detention during this period, and alleged permission of communication if the petitioner cooperated; and where there is conflicting evidence as to whether petitioner was denied communication, conflicting evidence as to whether any promises were made by the police; and where the petitioner was an adult person of average intelligence, with a background of considerable experience in the criminal law?

ARGUMENT FOR RESPONDENT

I. Disputed Factual Issues Decided in the Courts of the State of Washington.

The petitioner surrendered to Officer Usher of the Spokane Police Department. He confessed immediately upon his surrender to that officer (R. 40, 41). Lt. Wakeley, who saw the petitioner for about ½ hour on the evening of the arrest, testified as follows (R. 56):

"Q. Did Raymond Haynes at any time during that conversation ask permission to make a telephone call to his wife?

A. Not during the conversation.

Q. Well, at any time that night?

A. He might have asked afterward, after I got through talking to him. He wanted to know if his wife would be notified. I told him we would notify her that he was being held."

No request was made for an attorney by the petitioner. Nothing in the record indicates that petitioner's wife was not notified by the police as they promised to do. At the time of the dictation of his written confession the following morning, the petitioner was told that he could call his wife as soon as he was booked (R. 88).

Other than the foregoing, there is no evidence in the record of any denial of communication, nor any conditional promise of communication, *except by petitioner's own impeached, self-serving testimony, which is contradicted by the petitioner's own statements made prior to his testifying.*

The petitioner testified that Detective Pike, who was on duty from 4 p.m. until midnight on the evening of petitioner's surrender, made promises of communication to the petitioner, conditioned on cooperation, (R. 96, 97) and that he asked Pike several times for a lawyer (R. 96). Petitioner points out at page 10 of

Brief for the Petitioner that Pike testified, but was asked nothing about petitioner's request to telephone an attorney or his wife. The reason Pike was not asked these questions is obvious from the record inasmuch as Pike testified that he had never talked or associated with the petitioner (R. 50, 51). The petitioner in his testimony attributed statements to Detective Pike, made on the morning after his surrender. The petitioner's testimony shows however, that he confused Detective Pike, who was on duty from 4 until midnight on the 19th of December, with Detective Peck, who with Detective Cockburn first saw petitioner on the morning following (R. 100).

"Q. Who were the officers that were with you?

A. Oh, not Mr. Pike. Mr. Cockburn and Mr. Peck, I believe."

The foregoing indicates that any testimony regarding what Pike was told by the petitioner or what Pike said to the petitioner is obviously conflicting testimony.

Detective Cockburn testified that he did not remember the petitioner's ever having asked to telephone his wife and that he did not remember ever making any statement such as "You can't make a phone call until we get a statement." (R. 68). The respondent concedes that officer Cockburn's testimony did not constitute an absolute denial, yet on the other hand, in effect all Officer Cockburn testified to was that his

memory was not sufficient to answer the question. The petitioner "assumed" at page 12 of the Brief for the Petitioner that Detective Cockburn "heard Lieutenant Wakeley deny petitioner the right to phone until after the 'investigation' had been completed when he would be booked.", and petitioner implies that Cockburn's testimony to the effect that he could remember no promises, was thus untrue. However, Detective Cockburn could never have heard Lieutenant Wakeley say anything to the petitioner, because Lieutenant Wakeley saw the petitioner on the evening of the 19th of December and only that one time (R. 58), whereas Detective Cockburn saw the petitioner for the first time at 9:30 a.m. on the morning of the 20th of December (R. 68).

Petitioner on the basis of the foregoing argues at pages 11 and 12 of the Brief for the Petitioner that "Cockburn's answer . . . (indicating his inability to remember) is the only State's evidence touching petitioner's testimony that the police conditioned permission to make a phone call on the making of a signed confession . . ." The record, however, indicates the contrary. The petitioner's brief overlooks the very words of the petitioner which were a part of the State's evidence.

Detectives Peck and Cockburn were present (R. 83, 134) while the petitioner was dictating the confession

which was admitted in evidence, and the following occurred: Plaintiff's Exhibit No. 6 (R. 83-88 at 88):

> "Q. (By Cockburn and Peck) Have we made you any threats or promises?
>
> A. No."

The petitioner was asked by Detectives Peck and Cockburn if *we* had made any promises. Petitioner replied, *No*. The petitioner when he testified at the time of trial, for the first time attributed various promises to Detectives Cockburn and Peck. If, in fact, the petitioner had been promised anything by Cockburn and Peck, why did he not answer the specific question in this regard in the affirmative and then specify the promise or promises? Respondent submits that by reason of the petitioner's own sworn statement in which he denied to Detectives Peck and Cockburn that they had made any promises to him, that the evidence is conflicting as to whether or not promises were made by either of these two officers.

Petitioner's confession, Plaintiff's Exhibit No. 6 (R. 83-88 at 88), continues:

> "Q. Has any police officer made you any promises or threats?
>
> A. No, except that the lieutenant promised me that as soon as I was booked that I could call my wife."

Thus, when asked if *any* police officer had made any promises to him, the petitioner did not answer that Detective Pike had made promises, but only that Lieutenant Wakeley had made a "promise." This is in direct conflict with the petitioner's testimony to the effect that Detective Pike had made various promises to him.

The only promise then, according to petitioner's own statement as contained in the written confession, was that which petitioner attributes to Lieutenant Wakeley. That "promise" was merely a statement that petitioner could call his wife as soon as he was booked. This is nothing more than a statement of the departmental regulation. By petitioner's own words the "promise" carried no condition such as cooperation or confession. It called for nothing by the petitioner.

This "promise" specified by the petitioner was one that must have been made within one hour after the petitioner's surrender because Lieutenant Wakeley talked to the petitioner until about 10:30 on the evening of his arrest (R. 55) and saw him only that one time (R. 58). Thus petitioner by his own written statement, indicated that there were no promises after the statement he attributes to Lieutenant Wakeley and up until the time that he dictated the confession later introduced as Plaintiff's Exhibit No. 6 (R. 83-88).

The petitioner, after this confession was typed, swore to the truth of and signed the same on December

20th as being true (R. 76). The petitioner read Exhibit No. 6 and made changes therein (R. 76). The petitioner did *not* change the answers with respect to what promises were made to him by the police, indicating that no promises were made between the time the confession was dictated and the time that petitioner swore to the truth thereof.

Petitioner himself testified as to his post confession detention as follows (R. 100, 101):-

> "Q. When were you allowed to make a telephone call?
>
> A. I am not absolutely certain but it was either the Tuesday before Christmas, the 24th, or the Thursday after Christmas, the 26th."

There was no testimony that petitioner ever asked the Spokane City Police Jailer to make a telephone call, deliver a message, or write a letter. There is no testimony that petitioner ever asked the Spokane County Jailer for such permission. The only testimony hinges on the conclusion "not allowed."

Petitioner's wife called the Spokane Police and was told petitioner was in jail. Petitioner's wife asked the police *why* petitioner was being held. The police, who could not have known if in fact they were speaking to Mrs. Haynes, referred her to the newspapers for the reason *why* petitioner was in jail (R. 131). Petitioner's wife did not ask to visit him, did not ask that a message

be delivered to petitioner, did nothing more than ask *why* he was being held. The day following petitioner's surrender, his wife was personally present at the police station. She wanted petitioner's automobile. She made no attempt whatsoever to visit petitioner or deliver a message to him (R. 131). She later testified that she "first saw" petitioner one week after his surrender. She did not testify that she had ever made any attempts to visit petitioner, call petitioner on the telephone or have a message delivered to him (R. 131).

Thus the record indicates that the evidence was entirely conflicting with respect to the factual situation from which the confession later admitted in evidence as Plaintiff's Exhibit No. 6 (R. 83-88) emerged. This conflict in the evidence was decided in the state court system by a judge and a jury, whose physical presence permitted them to weigh the testimony of all of the witnesses. The trial court and the jury rejected the testimony of the petitioner, whose testimony was impeached by his hesitating admission to convictions of five serious crimes, and by his signed confession which conflicted with his own testimony as to the circumstances of his detention. The Supreme Court of the State of Washington reviewed these same facts.

The rule as set forth in the case of *Watts v. State of Indiana*, 338 U.S. 49, 93 L. Ed. 1801, 69 S. Ct. 1341 (1949) provides at page 51:

> " . . . there has been complete agreement that any conflict in testimony as to what actually led to a contested confession is not this Court's concern. Such conflict comes here authoritatively resolved by the State's adjudication. Therefore only those elements of the events and circumstances in which a confession was involved that are unquestioned in the State's version of what happened are relevant to the constitutional issue here . . . "

Respondent requests on the basis of the foregoing that petitioner be denied relief.

II. Absence of Circumstances Which Render a Confession Involuntary and Inadmissible.

The Supreme Court of the United States in the recent decision of *Reck v. Pate*, 367 U.S. 433, 6 L. Ed. (2d) 948, 81 S. Ct. 1541 (1961), again set forth the broad test for determining whether the Fourteenth Amendment has been violated with respect to a confession admitted in evidence in the trial court. At page 953 of 6 L. Ed. (2d) it is stated:

> "'. . . The question in each case is whether a defendant's will was overborne at the time he confessed. (Citing cases). If so, the confession cannot be deemed 'the product of a rational intellect and a free will,' (citing case). In resolving the issue all the circumstances attendant upon the confession must be taken into account . . ."

The totality of the circumstances surrounding the surrender, detention and interrogation of the petitioner, indicate that at all times his will was not to withhold

admission of his guilt but rather to confess his guilt. The only evidence to the contrary is the petitioner's own testimony in the trial court which, as has been pointed out, varied from his prior written statement in this regard.

The respondent requests that the facts as set forth in *Reck v. Pate,* supra, be compared with the facts as contained in the record in this case. At the time of petitioner's arrest, he voluntarily surrendered to the police, stating, "You got me, let's go." (R. 40). The petitioner confessed in the police car immediately after his arrest and pointed out the place of business which he had robbed, all of this while enroute to the police station (R. 41). The petitioner again confessed orally at the police station to Lieutenant Wakeley, and no requests of any kind were made by the petitioner before or during that confession (R. 53, 56). Petitioner might have requested his wife be called and was told his wife would be notified (R. 56). A third oral confession was given the following morning. The petitioner contends that requests for communication and promises of communication conditioned on cooperation were made at this time. The record indicates the contrary, as indicated in petitioner's own statement Plaintiff's Exhibit No. 6 (R. 83-88) in which he mentioned no such promises when asked. During the trial the three oral confessions were related by the officers, and no objection was made to this testimony. Although the petitioner contends that the written confession,

Plaintiff's Exhibit No. 6 (R. 83-88) the fourth in time, was obtained by coercion and against his will, the facts as set forth above indicate that the petitioner's will was actually to disclose his guilt from the moment of his arrest.

The only undisputed circumstances of this case are that there was a police department rule restricting communications with an accused who is booked only for investigation, that petitioner may have asked Lieutenant Wakeley to call his wife on the night of his surrender, that petitioner did want to know if his wife would be notified, that petitioner was told his wife would be notified (R. 56) and that petitioner was told he could call his wife when he was booked (R. 88). It is submitted that under the theory of the test set forth in the case of *Reck v. Pate*, 367 U.S. 433, 6 L. Ed. (2d) 948, 81 S. Ct. 1541 (1961), even though an accused is denied all communication while detained by the police, yet, unless the will of the accused to withhold confessing is overborne by such detention, then the confession is admissible. Likewise the fact that the petitioner was told his wife would be notified and that he could not call her until he had been booked does not per se render the confession inadmissible under the rule requiring a consideration of the totality of the circumstances surrounding the taking of the confession. Respondent makes the same argument with respect to the effect of R.C.W. 9.33.020 (5), making one who denies com-

munication guilty of a crime *if the denial is done for the purpose of extorting a confession.*

A brief consideration of those circumstances makes it clear that: there was no unwarranted delay in providing a preliminary hearing, as was the case in *Fikes v. Alabama*, 352 U.S. 191, 1 L. Ed. (2) 246, 77 S. Ct. 281 (1957); and *Haley v. Ohio*, 332 U.S. 596, 92 L. Ed. 224, 68 S. Ct. 302 (1948). There was no relay questioning by police such as can be found in the case of *Watts v. Indiana*, 338 U.S. 49, 93 L. Ed. 1801, 69 S. Ct. 1341 (1949), and *Ashcraft v. Tennessee*, 332 U.S. 143, 88 L. Ed. 1192, 64 S. Ct. 921 (1944). The total time of actual interrogation was approximately two hours and 20 minutes and during this time the petitioner made four actual confessions to the crime. A very different situation was presented in the case of *Fikes v. Alabama*, supra, *Haley v. Ohio*, supra, *Ashcraft v. Tennessee*, supra, *Watts v. Indiana*, supra and *Cicenia v. LeGay*, 357 U.S. 504, 2 L. Ed. (2d) 1523, 78 S. Ct. 1297 (1958). The total time of detention of the petitioner to the time of the signing of the confession which was admitted in evidence as Plainiff's Exhibit No. 6 (R. 83-88) was 17 to 19 hours. This is in sharp contrast to the factual situation in the cases just previously cited. The petitioner was allotted ample time for sleep and rest during the nighttime hours. He was not questioned until late into the night as occurred in *Haley v. Ohio*, supra, *Ashcraft v. Tennessee*, supra, *Watts v. Indiana*, supra,

and *Crooker v. California*, 357 U.S. 433, 2 L. Ed. (2d) 1448, 78 S. Ct. 1287 (1958). There were no false inducements to confess such as existed in *Spano v. New York*, 360 U.S. 315, 3 L. Ed. (2d) 1265, 79 S. Ct. 1202 (1959), and *Turner v. Pennsylvania*, 338 U.S. 62, 93 L. Ed. 1810, 69 S. Ct. 1352 (1949). There was no indication of physical abuse such as occurred in the case of *Reck v. Pate*, supra, *and Haley v. Ohio*, supra. The petitioner could not have been in doubt as to the reason for his detention inasmuch as he surrendered to the police, as distinguished from the factual situations in the *Turner v. Pennsylvania*, supra, and *Harris v. South Carolina*, 338 U.S. 68, 93 L. Ed. 1815, 69 S. Ct. 1354 (1949) cases. The total number of officers interrogating the petitioner was four, including Officer Usher, Lieutenant Wakeley, Detective Cockburn and Detective Peek, as distinguished from the factual situations in *Chambers v. Florida*, 309 U.S. 227, 84 L. Ed. 716, 60 S. Ct. 472 (1940), *Ashcraft v. Tennessee*, supra, *Haley v. Ohio*, supra, *Spano v. New York*, supra, and *Crooker v. California*, supra. Petitioner was an adult person, having a wife and child, and while the age of the petitioner is not contained in the record, some indication of his age may be found from his wife's testimony that she had been employed for 14 years for the same firm (R. 129), as distinguished from the case of *Haley v. Ohio*, supra, *Payne v. Arkansas*, 356 U.S. 560, 2 L. Ed. 975, 78 S. Ct. 844 (1958), and *Gallegos v. Colorado*, U.S. , 8 L. Ed. (2d) 325, 82 S. Ct.

The petitioner from his testimony on direct and cross examination appears to be of average intelligence and in fact he had been employed as a skilled workman (R. 94). This is a very different situation than that found in the case of *Fikes v. Alabama*, supra, *Spano v. New York*, supra, and *Harris v. South Carolina*, supra. While there is a contention that the post confession procedure was unwarranted, yet there is a dearth of testimony in this regard, as heretofore argued.

The police were not a new experience to the petitioner such as faced the accused in the cases of *Haley v. Ohio*, supra, and *Gallegos v. Colorado*, supra. In fact the petitioner in this case was a mature man, married, a skilled laborer of average intelligence who admitted to convictions of five serious crimes, including armed robbery, who had been paroled when he entered the State of Washington. With this background the petitioner seeks to put himself on the same footing as the 15 year old boy involved in *Haley v. Ohio*, supra, and the 14 year old boy involved in *Gallegos v. Colorado*, supra.

The case of *Haley v. Ohio*, 332 U.S. 596, 92 L. Ed. 224, 68 S. Ct. 302 (1948), differed factually from this case in the following respects: the accused was only 15 years of age, there was some evidence of physical violence against his person, he was questioned continuously for five hours by relay teams of police officers,

he was questioned until 5 a.m. without being permitted any time for sleep, his mother *actually* attempted to visit him and was refused, his lawyer attempted to visit him on two occasions and was refused, and this boy was not *asked* if any promises had been made to him or if his statement was voluntary, but was *told* that no promises had been made and in effect that no compulsion or force had been brought to bear in the obtaining of his signed confession. This court held at page 599 of that opinion:

> "What transpired would make us pause for careful inquiry if a mature man were involved. And when, as here a mere child — an easy victim of the law — is before us, special care in scrutinizing the record must be used. Age 15 is a tender and difficult age for a boy of any race. He cannot be judged by the more exacting standards of maturity. That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens."

In the very recent case of *Gallegos v. Colorado*, U.S: , 8 L. Ed. (2d) 325, 82 S. Ct. , the accused was a boy of only 14 *years of age* who was detained without friends or counsel for five days. At the *end* of which period he signed a confession. The following was set forth in that opinion at page 328, L. Ed. (2d):

> "The youth of the suspect was the crucial factor in Haley v. Ohio . . . "

The court further held on page 328 of the opinion:

> "The fact that petitioner was only 14 years old puts this case on the same footing as Haley v. Ohio, (US) supra"

and continuing on page 328, this court held:

> "That is to say, we deal with a person who is not equal to the police in knowledge and understanding of the consequences of the questions and answers being recorded and who is unable to know how to protect his own interests or how to get the benefits of his constitutional rights."

At page 329 this court held:

> "He cannot be compared with an adult in full possession of his senses and knowledge of the consequences of his admissions. He would have no way of knowing what the consequences of his confession were without having advice as to his rights — from someone concerned with securing him those rights — and without the aid of more mature judgment as to the steps he should take in the predicament in which he found himself."

A very different factual situation, of course, is presented in the case of the petitioner, Raymond Haynes. The petitioner's background, especially his prior experience with the police, and his having been on parole, must have, in practical effect, equipped him to deal

with the police on a far more equal footing than the average adult. The petitioner was not only "an adult in full possession of his senses and knowledgeable of the consequences of his admissions" (*Gallegos v. Colorado*, supra) but was an adult with considerable first-hand knowledge of the processes of the criminal law. Experience in interrogation indicates that the will to resist confessing by a person with such an extensive background, is not easily overborne.

The factual situation in this case does not support the language found in *Ashcraft v. Tennessee*, 322 U.S. 143, 88 L. Ed. 1192, 64 S. Ct. 921 (1944) to the effect that:

> "We think a situation such as that here shown by uncontradicted evidence is so inherently coercive that its very existence is irreconcilable with the possession of mental freedom by a lone suspect against whom its full coercive force is brought to bear . . . "

The totality of the undisputed circumstances indicates that while petitioner was desirous of contacting his wife, he was not induced to confess against his will to achieve this end and that his will was at all times to confess.

CONCLUSION

On the basis of the foregoing, the respondent respectfully requests that the petitioner be denied relief and that the decision of the Supreme Court of the State of Washington remain in full force and effect.

Respectfully submitted,

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